

REMARKS

This responds to the Office Action dated December 18, 2006 (hereinafter “Office Action”), and the references cited therein.

Claims 1, 3, 8, 23, and 25 are amended, claims 31-33 are added, and claims 14-22 have previously been canceled. Accordingly, claims 1-13 and 23-33 are now pending in this patent application. Applicants submit that the amendments to the claims are fully supported by this patent application as originally filed, and no new matter has been added.

Applicants hereby respectfully request further examination and reconsideration of this patent application in view of the foregoing claim amendments and following remarks.

§102 Rejection of the Claims

Claims 1-4, 6-13, and 23-30 were rejected under 35 U.S.C. § 102(b) as being anticipated by Keuser Sr. (US 1,571,012) (hereinafter “Keuser”). Applicants respectfully traverse on the ground that Keuser fails to disclose each element of the claims under consideration, as arranged therein.

Claim 1:

Claim 1 recites an impact resistant window assembly comprising, among other things, a bracket assembly including a bracket portion, “the bracket portion disposed within an outwardly extending opening of [a] window jamb assembly when the bracket portion is disposed in the first position, the bracket portion disposed over a portion of [an] interior portion of [a] sash when the bracket portion is disposed in the second position.” Applicants cannot find in Keuser any disclosure of a bracket portion having a position disposed within an outwardly extending opening of a window assembly, as recited in claim 1. Rather, Keuser teaches the superficial attachment and positioning of an article of hardware (i.e., the asserted bracket assembly) to the surface of a window jamb. For example, Keuser states:

The leading object of the present invention may be said to reside in the providing of an article of hardware of the character stated for attachment to, for instance, a window frame for convenient and rapid adjustment.

(Keuser at p. 1, ll. 12-17; *see also* Figs. 1-3.)

A further object of the present invention is to provide an article of the character stated which . . . may be readily attached to a window frame by unskilled labor.

(Keuser at p. 1, ll. 22-23.)

The combination of a window-sash, including its complemental window-jamb, of an antirattler comprising a supporting plate fixed to said window-jamb.

(Keuser at p. 2, ll. 82-85.) Thus, because Keuser teaches the superficial attachment and positioning of an article of hardware to the surface of a window jamb and not Applicants' claimed bracket portion having a position disposed within an outwardly extending opening of a window jamb assembly, anticipation of claim 1 by Keuser is absent. According to the Federal Circuit, "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W.L. Gore & Assocs. V. Garlock, Inc.*, 721 F.2d 1540, 200 USPQ 303, 313 (Fed. Cir. 1983). The prior art reference must disclose each element of the claimed invention "arranged as in the claim." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984).

Because Keuser fails to disclose each element of claim 1, as arranged therein, Applicants respectfully request withdrawal of this basis of rejection of such claim. Claims 2-7 and 31-32 are dependent on claim 1 and are patentable over Keuser for the reasons stated above, in addition to the elements in such claims.

Claim 32:

Additionally, regarding claim 32, Applicants cannot find in Keuser any disclosure of an impact resistant window assembly comprising a bracket portion "wherein the bracket portion includes a tool access port on a leading edge thereof" for sliding the bracket portion from a first portion to a second position, as recited or incorporated in claim 32. Rather, Keuser teaches the backend shiftable movement of a bolt handle, a front end of which is adapted to abut a window sash. For example, Keuser states:

By the above described arrangement and construction of parts a person has merely to shift the handle 8 from the position shown in Fig. 2.

(Keuser at p. 2, ll. 12-15.)

Because Keuser fails to disclose each element of claim 32, as arranged therein, Applicants respectfully request withdrawal of this basis of rejection of such claim.

Claim 3:

Additionally, regarding claim 3, Applicants cannot find in Keuser any disclosure of an impact resistant window assembly comprising a bracket assembly “wherein the bracket assembly is substantially concealed in the window jamb assembly from a frontal view of the window when the bracket portion is disposed in the first position,” as recited in claim 3. Rather, the article of hardware disclosed in Keuser is substantially visible in the window jamb assembly from a frontal view of the window. For example, when describing the substantially visible article of manufacture shown in Fig. 1 thereof, Keuser states:

Fig. 1, is a view in perspective of a window equipped with an antirattler embodying the invention.

(Keuser at p. 1, ll. 47-49.)

Because Keuser fails to disclose each element of claim 3, as arranged therein, Applicants respectfully request withdrawal of this basis of rejection of such claim.

Claim 7:

Additionally, regarding claim 7, Applicants cannot find in Keuser any disclosure of an impact resistant window assembly comprising “one or more fasteners securing the bracket assembly to an outer frame, where the one or more fasteners are concealed from view,” as recited in claim 7. Rather, Keuser teaches the article of manufacture is superficially attached to a window jamb using visible screws, which allows for easy access thereto. For example, Keuser states:

The above described device is attached to the jamb 16 of the window as by screws 17 and if desired slots 18 may be present to permit of adjustment of the device as a whole toward or away from sash 15.

(Keuser at p. 2, ll. 5-10; *see also* Figs. 1-3.)

Because Keuser fails to disclose each element of claim 7, as arranged therein, Applicants respectfully request withdrawal of this basis of rejection of such claim.

Claim 8:

Claim 8 recites an impact resistant window assembly comprising, among other things, “a bracket assembly disposed within a recess of a side portion of the window . . . and the bracket assembly is at least partially concealed in the first position.” To this end, Applicants hereby

incorporate by reference the relevant arguments asserted above in association with claims 1 and 3 (i.e., Keuser teaches the superficial attachment and positioning of an article of hardware (the asserted bracket assembly) to the surface of a window jamb, thereby resulting in the article being visible).

Because Keuser fails to disclose each element of claim 8, as arranged therein, Applicants respectfully request withdrawal of this basis of rejection of such claim. Claims 9-13 are dependent on claim 8 and are patentable over Keuser for the reasons stated above, in addition to the elements in such claims.

Claim 9:

Additionally, regarding claim 9, Applicants cannot find in Keuser any disclosure of an impact resistant window assembly "wherein the bracket assembly further includes a base plate coupled with an outer frame of the window," as recited in claim 9. Rather, Keuser teaches a support plate of the article of manufacture is superficially attached to a window jamb, not the outer frame of the window. For example, Keuser states:

The combination of a window-sash, including its complemental window-jamb, of an antirattler comprising a supporting plate fixed to said window-jamb.

(Keuser at p. 2, ll. 82-85.)

Because Keuser fails to disclose each element of claim 9, as arranged therein, Applicants respectfully request withdrawal of this basis of rejection of such claim.

Claim 12:

Additionally, regarding claim 12, Applicants cannot find in Keuser any disclosure of an impact resistant window assembly "wherein [a] bracket portion is disposed over a portion of [a] rail and [a] stile [of a window sash] when the bracket portion is disposed in the second position," as recited in claim 12. Similarly, the Office Action expressly acknowledged such claimed subject matter cannot be found in Keuser when it asserted:

Keuser Sr. shows all the claimed limitations except for the bracket portion being disposed over a portion of the rail and the stile when the portion is in the second position.

(Office Action at p. 3.)

Because Keuser fails to disclose each element of claim 12, as arranged therein, Applicants respectfully request withdrawal of this basis of rejection of such claim.

Claim 13:

Additionally, regarding claim 13, Applicants cannot find nor has the Office Action identified in Keuser any disclosure of an impact resistant window assembly “wherein [a] filler has an outer appearance similar to the jamb liner,” as recited in claim 13.

Because Keuser fails to disclose each element of claim 13, as arranged therein, Applicants respectfully request withdrawal of this basis of rejection of such claim.

Claim 23:

Claim 23 recites an impact resistant window assembly comprising, among other things, “a bracket assembly disposed within an outwardly extending opening of [a] window jamb liner . . . and the bracket assembly is at least partially concealed in the first position where [a] bracket portion is recessed within the window jamb assembly.” To this end, Applicants hereby incorporate by reference the relevant arguments asserted above in association with claims 1 and 3 (i.e., Keuser teaches the superficial attachment and positioning of an article of hardware (the asserted bracket assembly) to the surface of a window jamb, thereby resulting in the article being visible).

Because Keuser fails to disclose each element of claim 23, as arranged therein, Applicants respectfully request withdrawal of this basis of rejection of such claim. Claims 24-30 and 33 are dependent on claim 23 and are patentable over Keuser for the reasons stated above, in addition to the elements in such claims.

Claim 25:

Additionally, regarding claim 25, Applicants cannot find in Keuser any disclosure of an impact resistant window assembly comprising a bracket assembly “wherein the bracket assembly is substantially concealed in the window jamb assembly from a frontal view of the window when the bracket portion is disposed in the first position,” as recited in claim 25. To this end, Applicants hereby incorporate by reference the relevant arguments asserted above in association with claim 3 (i.e., the article of hardware (the asserted bracket assembly) disclosed in Keuser is substantially visible in the window jamb assembly from a frontal view of the window).

Because Keuser fails to disclose each element of claim 25, as arranged therein, Applicants respectfully request withdrawal of this basis of rejection of such claim. Claim 33 is

dependent on claim 25 and is patentable over Keuser for the reasons stated above, in addition to the elements in such claim.

Claim 27:

Additionally, regarding claim 27, Applicants cannot find in Keuser any disclosure of an impact resistant window assembly comprising “one or more fasteners securing the bracket assembly to an outer frame, where the one or more fasteners are concealed from view,” as recited in claim 27. To this end, Applicants hereby incorporate by reference the relevant arguments asserted above in association with claim 7 (i.e., Keuser teaches the article of manufacture (the asserted bracket assembly) is superficially attached to a window jamb using visible screws, which allows for easy access thereto).

Because Keuser fails to disclose each element of claim 27, as arranged therein, Applicants respectfully request withdrawal of this basis of rejection of such claim.

Claim 29:

Additionally, regarding claim 29, Applicants cannot find nor has the Office Action identified in Keuser any disclosure of an impact resistant window assembly “wherein [a] filler has an outer appearance similar to one or both of [a] window jamb assembly of the window jamb liner,” as recited in claim 29.

Because Keuser fails to disclose each element of claim 29, as arranged therein, Applicants respectfully request withdrawal of this basis of rejection of such claim.

§103 Rejection of the Claims

Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Keuser in view of Vazquez (US 2,003,128) (hereinafter “Vazquez”). Applicants respectfully traverse on the ground that there is no *prima facie* case of obviousness.

Claim 5:

Claim 5 recites an impact resistant window assembly “wherein [a] window sash includes a rail and a stile, and [a] bracket portion is disposed over a portion of the rail and the stile when the bracket portion is disposed in [a] second position.” The Office Action expressly acknowledged that Keuser does not disclose such claimed subject matter when it asserted:

Keuser Sr. shows all the claimed limitations except for the bracket portion being disposed over a portion of the rail and the stile when the portion is in the second position.

(Office Action at p. 3.) Instead, the Office Action attempts to rely on Vazquez to establish the missing claimed subject matter asserting it would have been obvious to modify the sliding structure of the article of manufacture disclosed in Keuser with the threaded screw structure disclosed in Vazquez. (See Office Action at p. 3.) However, Keuser expressly teaches against the threaded screw structure of Vazquez, which as described by Vazquez, requires "several turns so as to be capable of moving." (Vazquez at p. 2, ll. 27-31.) For example, Keuser states:

By the above described arrangement and construction of parts a person has merely to shift the handle 8 from the position shown in Fig. 2, to the position shown in Fig. 3 to secure a quick acting and efficient locking of parts to prevent window rattling.

(Keuser at p. 2, ll. 12-19.) According to the Federal Circuit, a factor cutting against a finding of motivation to combine or modify the prior art is when the prior art teaches away from the claimed combination. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 230 U.S.P.Q. 416 (Fed. Cir. 1986). Thus, because Keuser teaches against being combined with Vazquez, such combination is improper and without more, cannot support an obviousness rejection.

Because there is no *prima facie* case of obviousness of claim 5, Applicants respectfully request withdrawal of this basis of rejection of such claim.

Reservation of Rights

In the interest of clarity and brevity, Applicants may not have addressed every assertion made in the Office Action. Applicants' silence regarding any such assertion does not constitute any admission or acquiescence. Applicants reserve all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicants do not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence

of record as manifested by a cited prior art reference, Applicants timely object to such reliance on Official Notice, and reserve all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicants reserve all rights to pursue any canceled claims in a subsequent patent application claiming the benefit of priority of this patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited and encouraged to telephone Applicants' attorneys Greg W. Smock at (612) 373-6956 or Catherine I. Klima-Silberg at (612) 359-3276 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

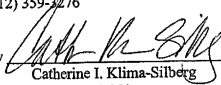
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 19th day of March, 2007 (Monday).

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